

By: Harris

S.B. No. 271

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the appointment of a successor guardian for certain  
3 wards adjudicated as totally incapacitated.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 161.101, Human Resources Code, is  
6 amended by amending Subsection (d) and adding Subsection (f) to  
7 read as follows:

8 (d) The department may not be required by a court to file an  
9 application for guardianship, and except as provided by Subsection  
10 (f) and Section 695(c), Texas Probate Code, the department may not  
11 be appointed as permanent guardian for any individual unless the  
12 department files an application to serve or otherwise agrees to  
13 serve as the individual's guardian of the person or estate, or both.

14 (f) On appointment by a probate court under Section 695(c),  
15 Texas Probate Code, the department shall serve as the successor  
16 guardian of the person or estate, or both, of a ward described by  
17 that section.

18 SECTION 2. Section 695, Texas Probate Code, is amended by  
19 adding Subsections (c), (d), and (e) to read as follows:

20 (c) The court may appoint the Department of Aging and  
21 Disability Services as a successor guardian of the person or  
22 estate, or both, of a ward who has been adjudicated as totally  
23 incapacitated if:

24 (1) there is no less restrictive alternative to

1 continuation of the guardianship;

2 (2) there is no family member or other suitable  
3 person, including a guardianship program, willing and able to serve  
4 as the ward's successor guardian;

5 (3) the ward is located more than 100 miles from the  
6 court that created the guardianship;

7 (4) the ward has private assets or access to  
8 government benefits to pay for the needs of the ward;

9 (5) the department is served with citation and a  
10 hearing is held regarding the department's appointment as proposed  
11 successor guardian; and

12 (6) the appointment of the department does not violate  
13 a limitation imposed by Subsection (d) of this section.

14 (d) The number of appointments under Subsection (c) of this  
15 section is subject to an annual limit of 55. The appointments must  
16 be distributed equally or as near as equally as possible among the  
17 health and human services regions of this state. The Department of  
18 Aging and Disability Services at its discretion may establish a  
19 different distribution scheme to promote the efficient use and  
20 administration of resources.

21 (e) If the Department of Aging and Disability Services is  
22 named as a proposed successor guardian in an application in which  
23 the department is not the applicant, citation must be issued and  
24 served on the department as provided by Section 633(c)(5) of this  
25 code.

26 SECTION 3. This Act takes effect immediately if it receives  
27 a vote of two-thirds of all the members elected to each house, as

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1 provided by Section 39, Article III, Texas Constitution. If this  
2 Act does not receive the vote necessary for immediate effect, this  
3 Act takes effect September 1, 2009.